87-1582

No. _____

OCTOBER TERM 1987

Supreme Court, U.S.
FILED
DEC 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT

OF THE UNITED STATES

| | |
|---|---|
| FRANK BORING FITZGERALD, | ) |
| APPELLANT, | ) |
| vs. | ) |
| STATE OF MONTANA, DEPARTMENT | ) |
| OF FAMILY SERVICES, | ) |
| GENE HUNTINGTON, DIRECTOR | ) |
| RESPONDENT. 1/ | ) |

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MONTANA 2/

APPENDICES PART 2 OF 2 PARTS

APPEARANCE: FRANK BORING FITZGERALD
3000 HALLOWELL LN
BILLINGS, MT 59101
406-259-5866
APPELLANT, PRO SE

1/ FORMERLY DEPT. SOCIAL & REHABILITATIVE SERVICES, DAVE LEWIS, DIRECTOR.
2/ CASE BELOW, 86-538, IN RE: MGM, YOUTH IN NEED OF CARE. 741 P2 770.

88 pp

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APPENDIX H (Typed Copy)

IN THE DISTRICT COURT OF THE 13TH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF YELLOWSTONE

| | |
|---|---|
| IN THE MATTER OF | )Judge |
| | )William J. Speare |
| MARGARET GERALDINE MOORE | )No. DJ-79-188 |
| | ) |
| Youth In Need of Care | )* O R D E R * |

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Pursuant to Respondent's request, and in conformity and compliance with provision, at Title 40-6-116(2), MCA (1985), and for good cause appearing.

IT IS HEREBY ORDERED that the Department of Health and Environmental Science, State of Montana, shall prepare a substitute Certificate of Birth, under 40-6-123, MCA (1985) for the above named youth, listing as father FRANK BORING FITZGERALD; age of her father at time of birth as 42; State of his birth as Missouri; which listing is consistent with the Findings of the Court in this matter, dated November 17, 1980.

DATED this 23 day of September, 1986.

(Sig) Speare, District Judge

cc: Frank Fitzgerald

Damon Gannett

Greg S. Mullowney

Department of Health & Environmental Sciences

CERTIFICATE OF SERVICE

APPENDIX I-A (Typed Copy)

THOMAS W. VAN DYK, M.D. P.C.
Plaza West Professional Building
1537 Avenue D #320
Billings, Montana 59102
(406) 248-7299
Practice Limited To Psychiatry

May 1, 1985

William J. Speare
District Judge
P.O. Box 35,029
Billings, MT 59107

RE: Margaret Moore

Dear Judge Speare:

I am writing to you concerning my evaluation of Frank Fitzgerald, his family situation and Margaret Moore. I will divide my report into sections. The first section, I will discuss my evaluation of Frank Fitzgerald. This evaluation included interview material, historical material provided by medical records, historical material provided from Frank's mother, and my observations of Frank during his visits with Margaret Moore. The second section will be my evaluation of Velma, Frank's wife of two and a half years and Marga-

ret's godmother. The third section will be my evaluation of Frank's relationship to his daughter and doing the four visits in which I observed them. The fourth section will be my evaluation of Margaret Moore, a statement as reported of me of her desires; and, I would like to, as a final section, make recommendations to the Court.

In addition to my evaluation of Frank Fitzgerald for the first Court hearing, I have examined Frank on August 31, September 7, September 13, and September 20 of 1984. In addition, I have observed Frank during visits with his daughter, Margaret, on four occasions. I have seen him for one additional visit. I have reviewed Frank's medical history and a report of the psychological evaluation provided by Dr. Viraldi, Dr. Tranel, and Dr. Wagner. Mr. Fitzgerald is a fifty four year old, white male, who is presently married. He has been married for two and a half years. He

has known his present wife for thirteen years. They were introduced as neighbors. They had some social contact and a one year courtship. Mr. Fitzgerald has married Margaret's godmother. He met her when she brought a birthday card for Margaret over to the house. Mr. Fitzgerald reports that he injured his shoulder last September and retired. He plans, eventually, to return to work; but, at the present he is concerned with house projects, tree trimming, septic systems. He lives at the northwest corner of Optimist Park at 3000 Halowell Lane. He has had no conflicts with the neighbors. In fact, he will often take care of their properties when they are gone. He has had no trouble with the law. His only offense being, having a license sticker that wasn't posted in time. He states that he has a good relationship with his wife. They have no physical fights. They have arguments which are resolved with effort. They have a good sex-

ual relationship and a mutual admiration of each other.

He sleeps well. He goes to sleep quickly and wakes after two or three hours to go to the bathroom. He goes back to sleep promply. He has a good appetite. He has some depressed moods, which are short but intense. He has a lot of hope for the future; especially, he has hope for obtaining custody of his daughter, Margaret. I asked him about hallucinations. He says that he sometimes has "blanking spells." They are short and sometimes involve visual changes. He has some hearing sensitivity, which can change from one ear to another. These symptons cause no interference with his life. I asked him about suspiciousness. He has some suspicion of the guardian ad litem, in this case, Damon Gannett. He realizes that his suspicions are probably not accurate. He has a feeling of apprehension often, but not fear or nevousness. He would like to get on with

the case and have it settled. He does not have any symptoms of projection. He has had several instances where he has felt that he has received "telepathic information". (I feel, professionally, unable to evaluate these incidents.) He has lost his surroundings on three or four occasions and seen a short vision at that time. He has had temper spells, occasionally, when he becomes frustrated when things do not work well.

I asked Frank, then, to provide me some history of his family. Frank states that his father was hit by a golf club before 1928. He suffered a head injury and had to have eighteen pieces of bone removed from his skull. His father was married in Los Angles in 1928; and, Frank was born in Kansas City. When Frank was two years old, he returned to California. The birth was a normal one, at home, attended by a doctor and a midwife. Frank's mother states that Frank got along with other children well.

During Frank's growing up years, his father worked nights. Frank was a child who would not fight with other children. Frank's mother reports that Frank did well in high school. He participated in the high jump and that he had plenty of male friends. He had a girlfriend named Elsie, who, has since, died of cancer. That he often worked on old cars, and went on double dates. Frank received the Bausch and Lomb Honorary Science award in high school. He went to work one day out of high school in Paso Robles, California. His mother noted no psychological difficulties. Frank was reported having done chores willingly and having raised rabbits. He want into the army after attending college. He became ill, and then had an auto accident after induction. He had to have nine stitches in his head. A truck and trailer ran a red light and hit him. An electroencephalogram, at that time, did not show any trouble. Two other electro-

encephalograms were abnormal. He had normal spinal tap. He had excited and erratic behavior. He had electroconvulsive therapy, electric subconvulsive therapy and insulin shock therapy. With, or in spite of all of this, his bahavior finally settled down and he was dismissed. He had a diagnosis of schizophrenia and was eventually given a disability for this. After leaving the army, he tried to get his job back, but was unable to do so. He went to college and obtained reasonable grades. After graduation, he worked steadily until retirement. He has had three close personal relationships with friends. He has not undergone any further deterioration.

Mental status examination: Frank has adequate orientation, fund of information, memory and intelligence. His verbal and motor behavior appear to be within normal limits. His mood is, somewhat, limited in range; but, otherwise normal. I do not see any evidence of psychotic symptoms. He

does describe very transient spells of visual spells, blacking out, intensification of sound, visions of telephone poles or brighter colors. I feel that these are organic symptoms either from his head injury as a child or residuals of his electro shock treatment or insulin coma. He does not have any of the classic symptoms of depression or schizophrenia such as paranoia, delusions, hallucinations, suspicious behavior. Frank's judgment appears to be intact. It is my impression that he suffers, at the present time, no psychiatric disorder.

My evaluation on Velma Fitzgerald. Velma is somewhat obese, middle aged woman, who has been married to Frank Fitzgerald for two and a half years. She appears to care very much for Frank and for Margaret; and, to be very attached to them both. She is an active participant in Frank's attempt to get custody of Margaret. Velma has had no significant medical problems. She does

not drink or smoke. Her sister was a resident at Warm Springs after an injury while working at the Lewis and Clark Caverns. However, Velma states that Dr.Xanthopoulos insits that there is nothing wrong with her. Her sister, presently, works as a housekeeper in Wyoming.

Mental status examination: Velma appears to have adequate orientation, fund of information, memory and intelligence. Her verbal and motor behavior are within normal limits. Her affect and range is completely normal. There are no psychotic symptoms. Her judgment and insight are intact. He has no psychiatric disorder.

The relationship between Margaret, Velma and Frank. I saw them together for four visits. I noticed a definite improvement of the relationship during the four visits. The visits began awkwardly. There was some tension with the examiner present. Two of the visits were at the hospital in the Day Room at Two North. At times, I

would ask members of the family questions; or, at times, I would observe their interaction while they would talk together or put together simple puzzles. The pattern that I noticed was improvement between visits one and four, in Frank and Velma's comfort in dealing with Margaret, and Margaret's comfort and satisfaction in dealing with them. I had lunch with the family, hoping that a more informal atmosphere would provide more information. I noticed no change in their behavior. I, also, saw them for a fourth visit in my office. During these visits, I noticed that Margaret and Frank are very much alike in their intellectual abilities and their interests. Velma and Frank have attempted to provide for Margaret, things that they are interested in. They have taken her to restaurants and fixed meals at home. They have attempted to get Margaret to help with the cooking. They have provided Margaret with access to their

computer. They have attempted to demonstrate their caring and interest in Margaret's life in every way. They have not appeared to go overboard on this; but, they have done a reasonable job of trying to get along with Margaret. I have encouraged them, during the visits, to accept Margaret as she is and where she is and try to work with her on developing a relationship. During these visits, Margaret appears to have become more interested in Velma and Frank. She seems to enjoy bantering with them about intellectual subjects. I notice no disruptive behavior such as scolding, anxiousness, tension and fighting, hitting, inappropriate touching, or any other destructive or inappropriate social behavior. it appears to me that Frank and Velma are <u>inexperienced</u> parents; and, there is a need for them to have more time for Margaret, in order to better relate to her. They are not in touch with what girls, Margaret's age, are interested

in and satisfying this; but, they have been learning rapidly from their visits with Margaret. One of Margaret's main concerns during the visits, was the size of Frank and Velma's house; and, that she would have to sleep in the kitchen or on the couch. During the visits, which Margaret stayed over night, apparently this was accomplished without problem.

During the first visit that I had with Margaret, Frank and Velma, Margaret took me aside and told me that she thought Frank and Velma were very nice, but that she wanted to stay where she was. She indicated that she wished that they would "butt out and stay out of her life."

Evaluation of Margaret Moore: Margaret is a seventh grade student in Missoula. She is a good student. She is a thin, tall girl who appears her stated age. She has a bright, cheerful expression, is outgoing, warm and has a pleasing manner. She appears to have adequate intellectual func-

tioning, orientation, memory. She has a wonderful sense of humor and a genuine interest in people and her surroundings. Her verbal and motor behavior are normal. Her judgment and insight apppear to be intact. There are no psychotic symptoms. She appears to be deeply attached to the church that the Curtis family belongs to; and, deeply believes the teachings of that faith. Frank and Velma appear to have been respectful of Margaret's faith in this church; however, they do not agree with this or belong to it themselves. Margaret Moore appears to be a normal youngster for her age; and, I detect no psychiatric problems from my interview, at the present time.

I would like to close with a summary paragraph and recommendation to the Court. It appears to me, number one, that Frank Fitzgerald did have a serious illness of some sort as a young man. It is unclear to me whether this was a schizophrenic de-

pressive, or organic illness. My suspicion is that it was an organic illness. He has been left with some residual from this illness; but, it appears to me these residuals are not sufficient to prevent his daily functioning on a job for many years or his active marriage, at the present time. They are not sufficient to prevent adequate parenting, as shown on these visits. Velma Fitzgerald appears to be very decent, upstanding, hard working woman, who would certainly make an adequate parent for Margaret. Margaret Moore, despite the problems that she has had in the past, her schizophrenic mother, her having been in two foster homes, and including the benefit of her past, the psychiatric care, appears to me, at this time, to be a surprisingly well adjusted adolescent. I feel that Velma and Frank Fitzgerald have done an adequate and reasonable job in their visits with Margaret; and, would make suitable and adequate parents for Margaret

on a long term basis. I see no medical reasons that they could not perform adequately as parents. Margaret, herself, expresses a desire to continue in her present placement and indicates some wish that Frank and Velma would leave her alone. She expresses a desire for infrequent visitation. I would like to recommend to the Court that Velma and Frank are adequate parents for Margaret Moore. I can see no reason that Margaret could not be placed with them other than Margaret's desires that she not be placed with them. If Margaret is not placed with the Fitzgerald family, I would strongly recommend that Velma and Frank Fitzgerald be allowed some sort of continuing visitation rights and some sort of long term input into the life of their daughter and godchild, Margaret Moore.

If you have further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

(Sig) Van Dyk, M.D.

TWVD/mk

APPENDIX I-B (Typed Copy)

THOMAS W. VAN DYK, M.D.
Plaza West Professional Building
1537 Avenue D, #320
Billings, Mt. 59102
(406) 248-7299

July 15, 1980

Peggy Smith
Department of Public Welfare
Yellowstone County Courthouse
Billings, Mt. 59101

Mary Honaker
Mental Health Center
1245 North 29th
Billings, Mt. 59101

Dear Peggy and Mary,

I am writing to relay a psychiatric examination I did on Frank Fitzgerald that he approached me about privately and obtained in support of his petition for custody of Margaret Moore, his daughter by his report, from a common-law relationship with Jewel Moore eight years ago.

Apparently Margaret was in Jewel's custody for approximately the first seven years of her life, and was taken from her home one year ago and placed with the Phillips family here in Billings because

of child abuse allegations. Mr. Fitzgerald relates that he has maintained his interest in Margaret through this time although was prevented by various authorities, a doctor, an attorney and a public health nurse from speaking with or visiting Margaret. He on one occasion did request that Jewel let him send child support which he did not do.

His personal history includes that he is now a licensed technician who works on two-way radios. He was self employed up until the time Margaret was born, but the last eight years he has worked with Industrial Electronics servicing radios. He reports that he has six years of college education, that he has not been in trouble with the law and that he has not used drugs or alcohol. He has been seen once by a psychiatrist for depression which was a result of frustration in dealing with this problem with Margaret. He presently owns property in the community, two houses, one

of which he lives in and the other he rents. He is apparently engaged to a young woman, Connie, who has two daughters ages eight and nine and is also interested in the children.

Mr. Fitzgerald has made some contribution to society through his profession in that he has been president of the California Citizens Band Organization and has organized a publication on their behalf promulgating new rules for the citizens band radio system.

During my interview with him, Mr. Fitzgerald struck me as a straightforward, middle-aged male of 50 years who attempted to relate his story honestly and forthrightly. He was alert and oriented. His memory is good. I detected no major mood disorder and no major perceptual disorder. He seems to be a man of good moral character who has attempted to do well in his relationships with others and in his relations. I detected no defects in judgment

or insight. Verbal and motor behavior were normal.

Mr. Fitzgerald's family history gives some indication of psychiatric disorder in that his father shot himself ten years ago at the age of 62. His mother, age 67, is well and lives in Los Angeles. He has no brothers or sisters.

At the present time I feel he has no major psychiatric disorder, that he has maintained his interest in Margaret from a distance and attempted to maintain it personally through legal and medical channels over the years. He seems to have been a solid, hard-working citizen who has attempted to make his contribution to society. He has worked steadily and has not been involved in deviate behavior that I can tell. I would recommend that if no conflicting information turns up, Mr. Fitzgerald be given custody of his daughter by the court.

If you have any questions on this mat-

ter, please do not hesitate to contact me.

Sincerely,

(Sig) Van Dyk, M.D.

Psychiatrist

APPENDIX J (Typed Copy)

CONSTITUTION OF MONTANA

ARTICLE II
DECLARATION OF RIGHTS

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political

rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 15. Rights of persons not a-

dults. The rights of persons under 18 years of age shall include, but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

ARTICLE III
GENERAL GOVERNMENT

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

UNITED STATES CONSTITUTION

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

In all criminal prosecutions , the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT 14

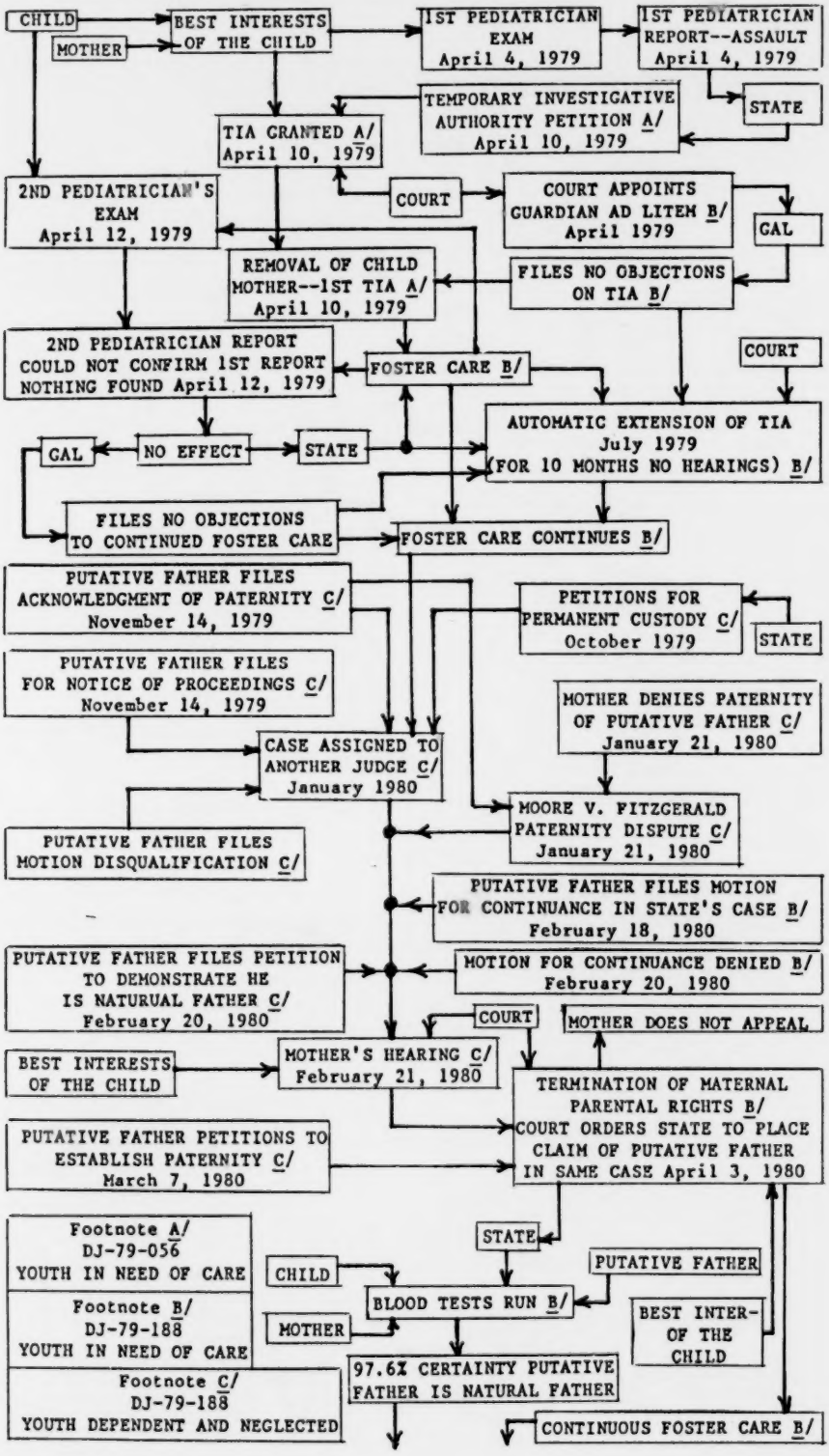
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make

or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

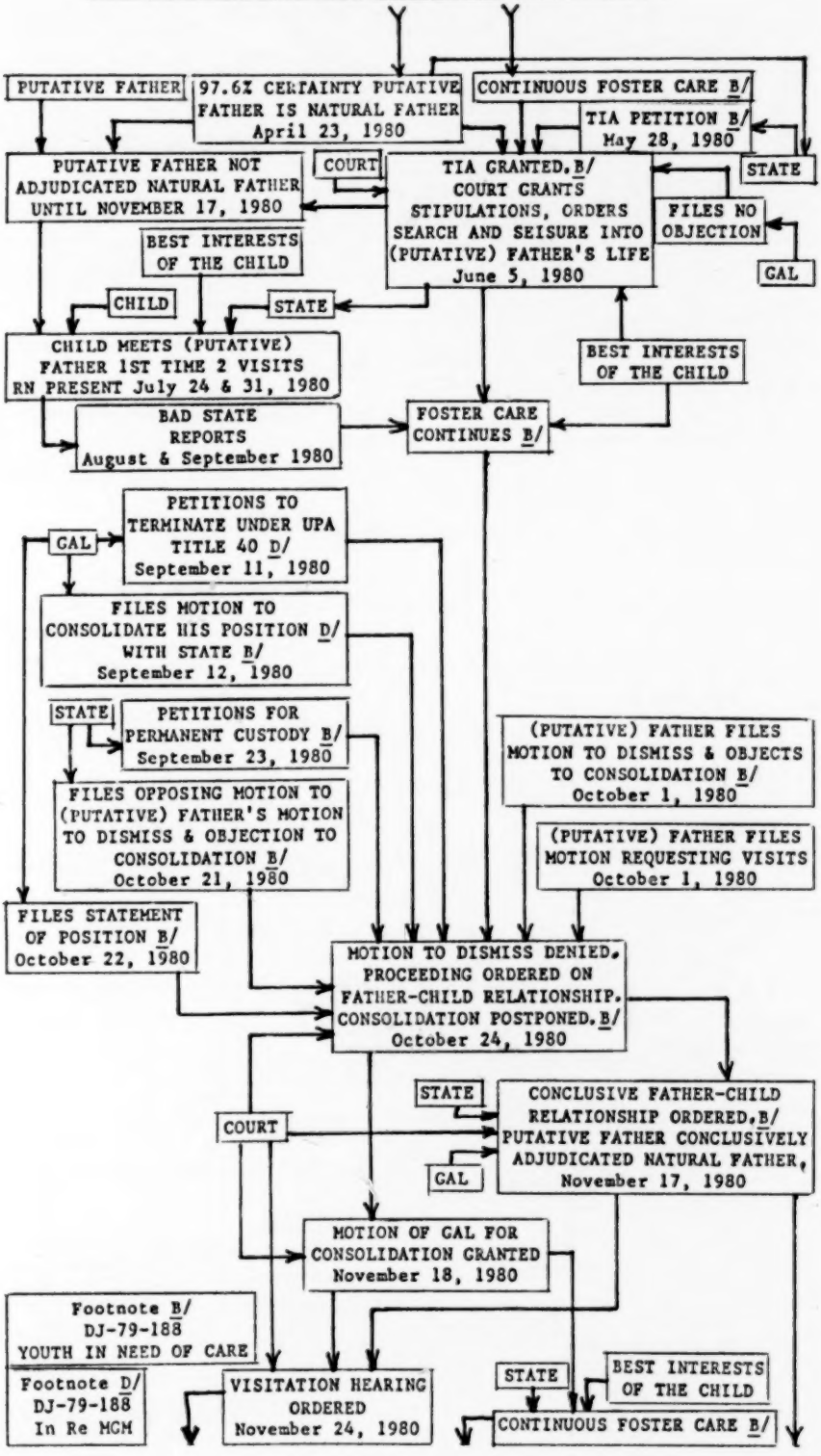
ARTICLE I

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

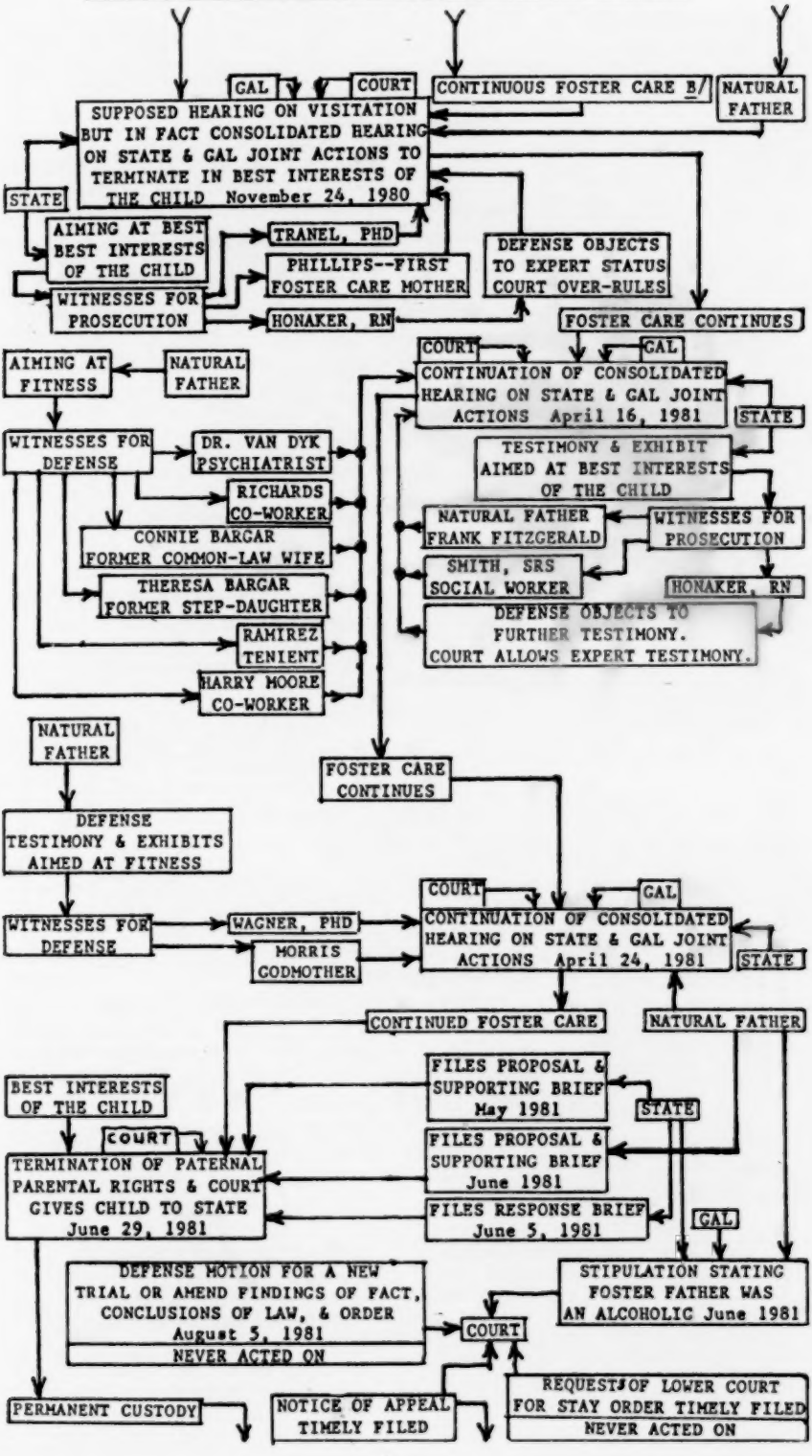
# FLOW CHART
## 1ST STAGE--APRIL 1979 TO APRIL 1980


CHILD
MOTHER
BEST INTERESTS OF THE CHILD
1ST PEDIATRICIAN EXAM April 4, 1979
1ST PEDIATRICIAN REPORT--ASSAULT April 4, 1979
STATE
TEMPORARY INVESTIGATIVE AUTHORITY PETITION A/ April 10, 1979
TIA GRANTED A/ April 10, 1979
COURT
2ND PEDIATRICIAN'S EXAM April 12, 1979
COURT APPOINTS GUARDIAN AD LITEM B/ April 1979
GAL
FILES NO OBJECTIONS ON TIA B/
REMOVAL OF CHILD MOTHER--1ST TIA A/ April 10, 1979
2ND PEDIATRICIAN REPORT COULD NOT CONFIRM 1ST REPORT NOTHING FOUND April 12, 1979
FOSTER CARE B/
COURT
AUTOMATIC EXTENSION OF TIA July 1979 (FOR 10 MONTHS NO HEARINGS) B/
GAL
NO EFFECT
STATE
FILES NO OBJECTIONS TO CONTINUED FOSTER CARE
FOSTER CARE CONTINUES B/
PUTATIVE FATHER FILES ACKNOWLEDGMENT OF PATERNITY C/ November 14, 1979
PETITIONS FOR PERMANENT CUSTODY C/ October 1979
STATE
PUTATIVE FATHER FILES FOR NOTICE OF PROCEEDINGS C/ November 14, 1979
MOTHER DENIES PATERNITY OF PUTATIVE FATHER C/ January 21, 1980
CASE ASSIGNED TO ANOTHER JUDGE C/ January 1980
MOORE V. FITZGERALD PATERNITY DISPUTE C/ January 21, 1980
PUTATIVE FATHER FILES MOTION DISQUALIFICATION C/
PUTATIVE FATHER FILES MOTION FOR CONTINUANCE IN STATE'S CASE B/ February 18, 1980
PUTATIVE FATHER FILES PETITION TO DEMONSTRATE HE IS NATURUAL FATHER C/ February 20, 1980
MOTION FOR CONTINUANCE DENIED B/ February 20, 1980
COURT
MOTHER DOES NOT APPEAL
BEST INTERESTS OF THE CHILD
MOTHER'S HEARING C/ February 21, 1980
TERMINATION OF MATERNAL PARENTAL RIGHTS B/ COURT ORDERS STATE TO PLACE CLAIM OF PUTATIVE FATHER IN SAME CASE April 3, 1980
PUTATIVE FATHER PETITIONS TO ESTABLISH PATERNITY C/ March 7, 1980
STATE
CHILD
PUTATIVE FATHER
BLOOD TESTS RUN B/
MOTHER
BEST INTER- OF THE CHILD
97.6% CERTAINTY PUTATIVE FATHER IS NATURAL FATHER
CONTINUOUS FOSTER CARE B/
Footnote A/ DJ-79-056 YOUTH IN NEED OF CARE
Footnote B/ DJ-79-188 YOUTH IN NEED OF CARE
Footnote C/ DJ-79-188 YOUTH DEPENDENT AND NEGLECTED

# FLOW CHART
## 2ND STAGE--APRIL 1980 TO NOV 24,1980

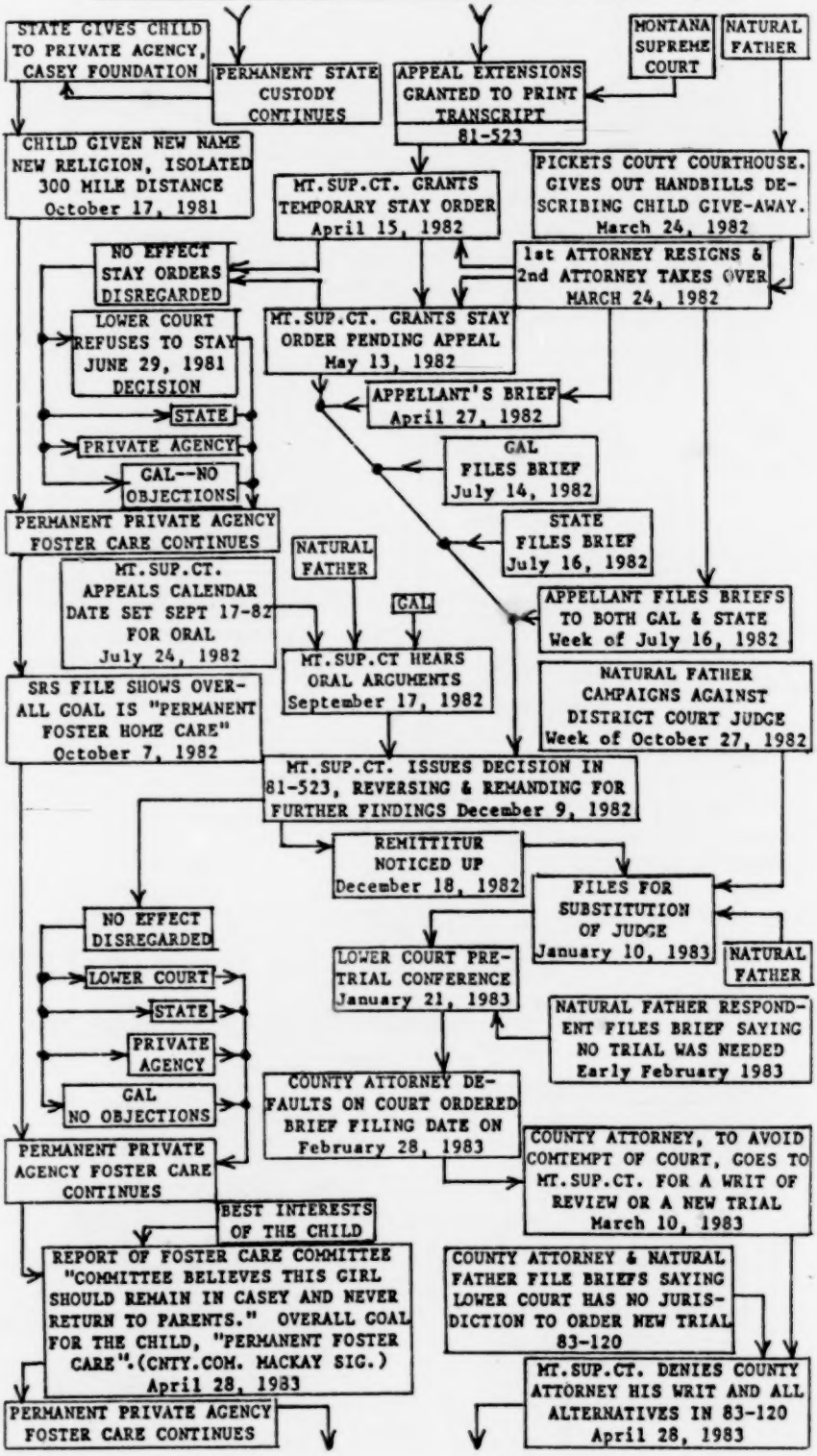

PUTATIVE FATHER
97.6% CERTAINTY PUTATIVE FATHER IS NATURAL FATHER April 23, 1980
CONTINUOUS FOSTER CARE B/
TIA PETITION B/ May 28, 1980
STATE
PUTATIVE FATHER NOT ADJUDICATED NATURAL FATHER UNTIL NOVEMBER 17, 1980
COURT
TIA GRANTED, B/ COURT GRANTS STIPULATIONS, ORDERS SEARCH AND SEISURE INTO (PUTATIVE) FATHER'S LIFE June 5, 1980
FILES NO OBJECTION
GAL
BEST INTERESTS OF THE CHILD
CHILD
STATE
CHILD MEETS (PUTATIVE) FATHER 1ST TIME 2 VISITS RN PRESENT July 24 & 31, 1980
BEST INTERESTS OF THE CHILD
BAD STATE REPORTS August & September 1980
FOSTER CARE CONTINUES B/
PETITIONS TO TERMINATE UNDER UPA TITLE 40 D/ September 11, 1980
GAL
FILES MOTION TO CONSOLIDATE HIS POSITION D/ WITH STATE B/ September 12, 1980
STATE
PETITIONS FOR PERMANENT CUSTODY B/ September 23, 1980
(PUTATIVE) FATHER FILES MOTION TO DISMISS & OBJECTS TO CONSOLIDATION B/ October 1, 1980
FILES OPPOSING MOTION TO (PUTATIVE) FATHER'S MOTION TO DISMISS & OBJECTION TO CONSOLIDATION B/ October 21, 1980
(PUTATIVE) FATHER FILES MOTION REQUESTING VISITS October 1, 1980
FILES STATEMENT OF POSITION B/ October 22, 1980
MOTION TO DISMISS DENIED, PROCEEDING ORDERED ON FATHER-CHILD RELATIONSHIP. CONSOLIDATION POSTPONED. B/ October 24, 1980
STATE
COURT
CONCLUSIVE FATHER-CHILD RELATIONSHIP ORDERED, B/ PUTATIVE FATHER CONCLUSIVELY ADJUDICATED NATURAL FATHER, November 17, 1980
GAL
MOTION OF GAL FOR CONSOLIDATION GRANTED November 18, 1980
Footnote B/ DJ-79-188 YOUTH IN NEED OF CARE
Footnote D/ DJ-79-188 In Re MGM
VISITATION HEARING ORDERED November 24, 1980
STATE
BEST INTERESTS OF THE CHILD
CONTINUOUS FOSTER CARE B/

# FLOW CHART
## 3RD STAGE NOV 24, 1980 TO OCT 17, 1981


GAL
COURT
SUPPOSED HEARING ON VISITATION BUT IN FACT CONSOLIDATED HEARING ON STATE & GAL JOINT ACTIONS TO TERMINATE IN BEST INTERESTS OF THE CHILD November 24, 1980
CONTINUOUS FOSTER CARE B/
NATURAL FATHER
STATE
AIMING AT BEST BEST INTERESTS OF THE CHILD
TRANEL, PHD
PHILLIPS--FIRST FOSTER CARE MOTHER
WITNESSES FOR PROSECUTION
HONAKER, RN
DEFENSE OBJECTS TO EXPERT STATUS COURT OVER-RULES
FOSTER CARE CONTINUES
AIMING AT FITNESS
NATURAL FATHER
COURT
GAL
CONTINUATION OF CONSOLIDATED HEARING ON STATE & GAL JOINT ACTIONS April 16, 1981
STATE
WITNESSES FOR DEFENSE
DR. VAN DYK PSYCHIATRIST
RICHARDS CO-WORKER
CONNIE BARGAR FORMER COMMON-LAW WIFE
THERESA BARGAR FORMER STEP-DAUGHTER
RAMIREZ TENIENT
HARRY MOORE CO-WORKER
TESTIMONY & EXHIBIT AIMED AT BEST INTERESTS OF THE CHILD
NATURAL FATHER FRANK FITZGERALD
WITNESSES FOR PROSECUTION
SMITH, SRS SOCIAL WORKER
HONAKER, RN
DEFENSE OBJECTS TO FURTHER TESTIMONY. COURT ALLOWS EXPERT TESTIMONY.
NATURAL FATHER
FOSTER CARE CONTINUES
DEFENSE TESTIMONY & EXHIBITS AIMED AT FITNESS
WITNESSES FOR DEFENSE
WAGNER, PHD
MORRIS GODMOTHER
COURT
GAL
CONTINUATION OF CONSOLIDATED HEARING ON STATE & GAL JOINT ACTIONS April 24, 1981
STATE
CONTINUED FOSTER CARE
NATURAL FATHER
BEST INTERESTS OF THE CHILD
COURT
TERMINATION OF PATERNAL PARENTAL RIGHTS & COURT GIVES CHILD TO STATE June 29, 1981
FILES PROPOSAL & SUPPORTING BRIEF May 1981
STATE
FILES PROPOSAL & SUPPORTING BRIEF June 1981
FILES RESPONSE BRIEF June 5, 1981
GAL
DEFENSE MOTION FOR A NEW TRIAL OR AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER August 5, 1981
NEVER ACTED ON
COURT
STIPULATION STATING FOSTER FATHER WAS AN ALCOHOLIC June 1981
PERMANENT CUSTODY
NOTICE OF APPEAL TIMELY FILED
REQUEST OF LOWER COURT FOR STAY ORDER TIMELY FILED
NEVER ACTED ON

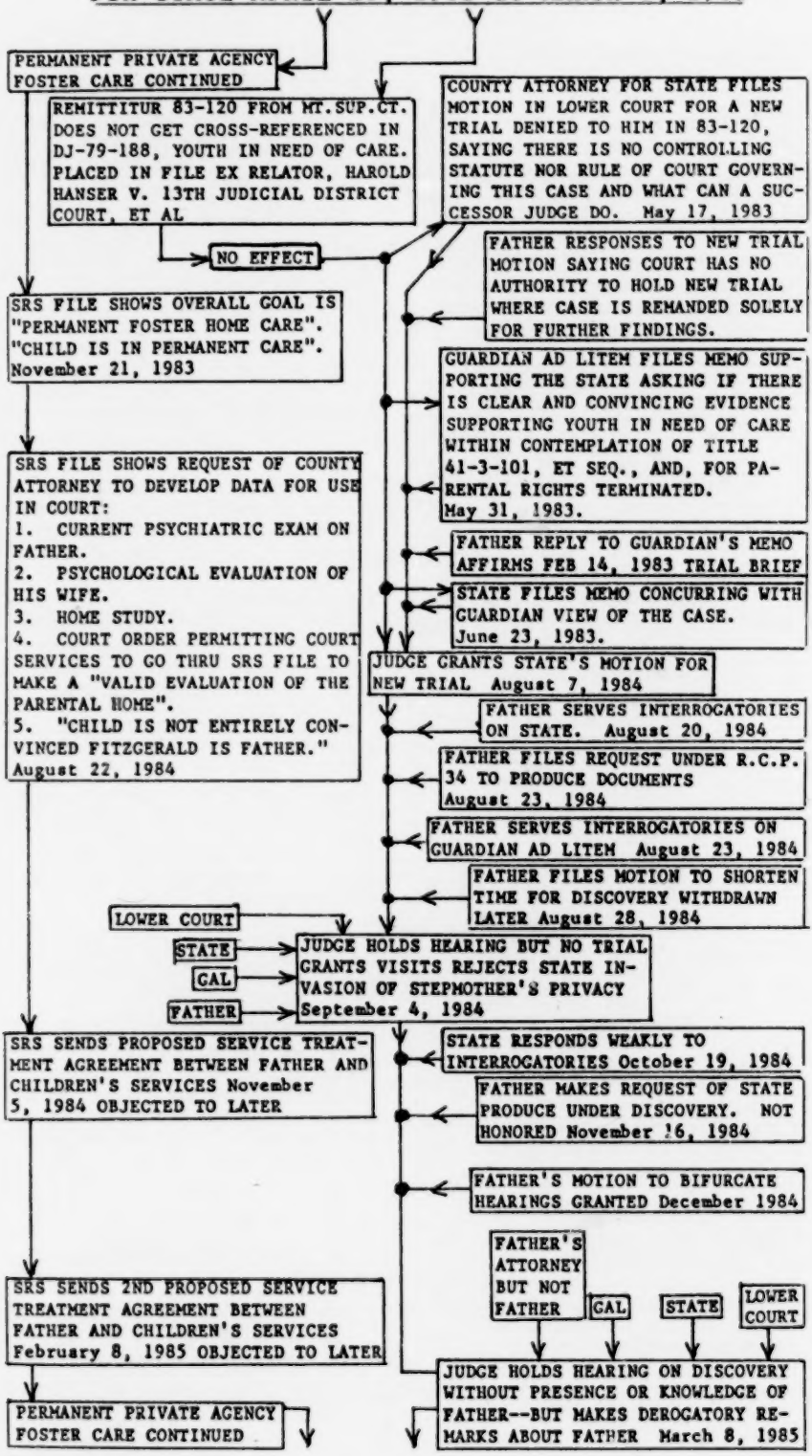
# FLOW CHART

## 4TH STAGE OCT 17, 1981 TO APRIL 28, 1983

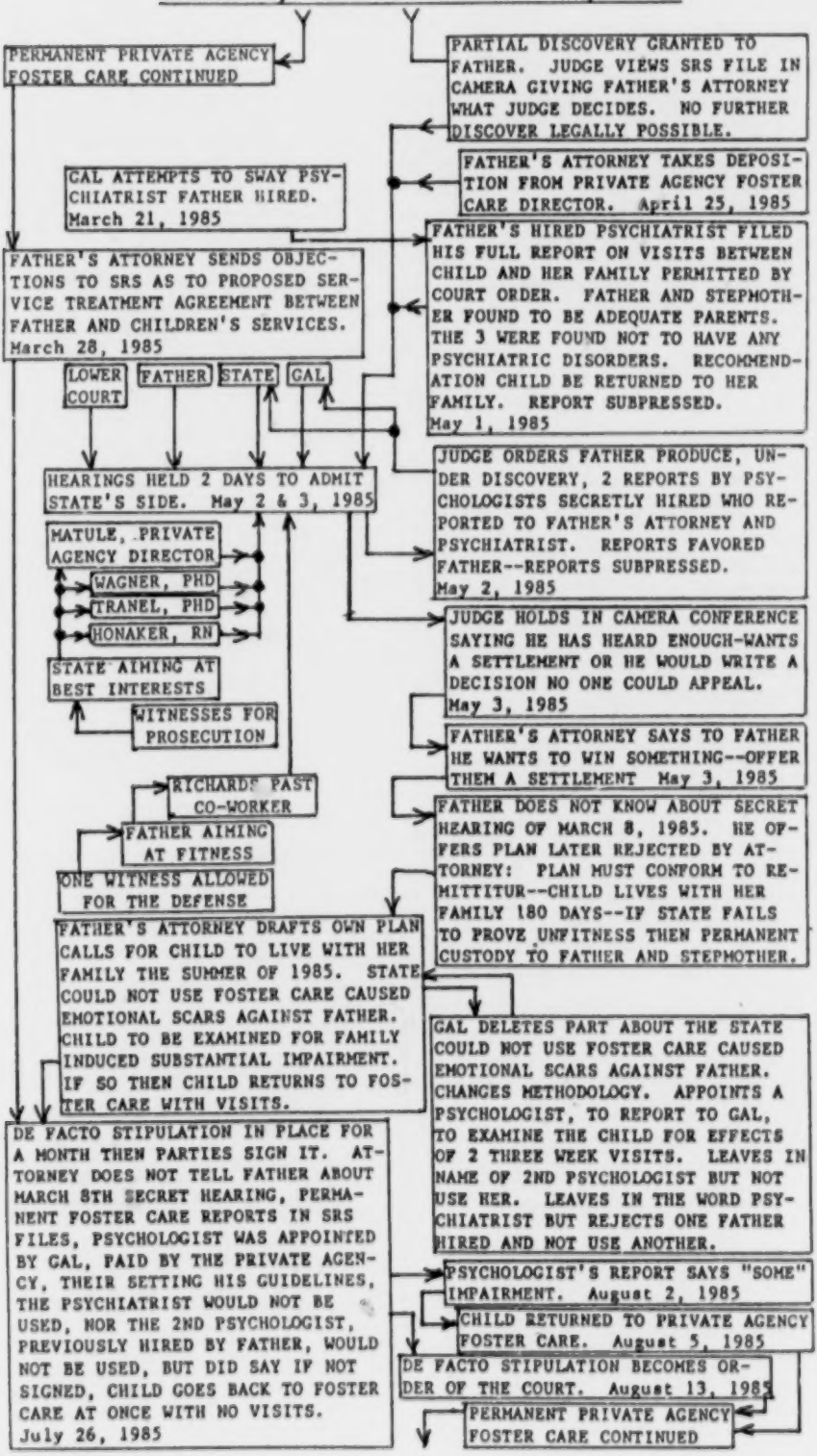

STATE GIVES CHILD TO PRIVATE AGENCY, CASEY FOUNDATION
PERMANENT STATE CUSTODY CONTINUES
APPEAL EXTENSIONS GRANTED TO PRINT TRANSCRIPT 81-523
MONTANA SUPREME COURT
NATURAL FATHER
CHILD GIVEN NEW NAME NEW RELIGION, ISOLATED 300 MILE DISTANCE October 17, 1981
MT.SUP.CT. GRANTS TEMPORARY STAY ORDER April 15, 1982
PICKETS COUTY COURTHOUSE. GIVES OUT HANDBILLS DESCRIBING CHILD GIVE-AWAY. March 24, 1982
NO EFFECT STAY ORDERS DISREGARDED
1st ATTORNEY RESIGNS & 2nd ATTORNEY TAKES OVER MARCH 24, 1982
LOWER COURT REFUSES TO STAY JUNE 29, 1981 DECISION
MT.SUP.CT. GRANTS STAY ORDER PENDING APPEAL May 13, 1982
STATE
APPELLANT'S BRIEF April 27, 1982
PRIVATE AGENCY
GAL FILES BRIEF July 14, 1982
GAL--NO OBJECTIONS
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUES
STATE FILES BRIEF July 16, 1982
NATURAL FATHER
MT.SUP.CT. APPEALS CALENDAR DATE SET SEPT 17-82 FOR ORAL July 24, 1982
GAL
APPELLANT FILES BRIEFS TO BOTH GAL & STATE Week of July 16, 1982
MT.SUP.CT HEARS ORAL ARGUMENTS September 17, 1982
SRS FILE SHOWS OVERALL GOAL IS "PERMANENT FOSTER HOME CARE" October 7, 1982
NATURAL FATHER CAMPAIGNS AGAINST DISTRICT COURT JUDGE Week of October 27, 1982
MT.SUP.CT. ISSUES DECISION IN 81-523, REVERSING & REMANDING FOR FURTHER FINDINGS December 9, 1982
REMITTITUR NOTICED UP December 18, 1982
FILES FOR SUBSTITUTION OF JUDGE January 10, 1983
NATURAL FATHER
NO EFFECT DISREGARDED
LOWER COURT PRE-TRIAL CONFERENCE January 21, 1983
LOWER COURT
STATE
NATURAL FATHER RESPONDENT FILES BRIEF SAYING NO TRIAL WAS NEEDED Early February 1983
PRIVATE AGENCY
COUNTY ATTORNEY DEFAULTS ON COURT ORDERED BRIEF FILING DATE ON February 28, 1983
GAL NO OBJECTIONS
COUNTY ATTORNEY, TO AVOID CONTEMPT OF COURT, GOES TO MT.SUP.CT. FOR A WRIT OF REVIEW OR A NEW TRIAL March 10, 1983
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUES
BEST INTERESTS OF THE CHILD
REPORT OF FOSTER CARE COMMITTEE "COMMITTEE BELIEVES THIS GIRL SHOULD REMAIN IN CASEY AND NEVER RETURN TO PARENTS." OVERALL GOAL FOR THE CHILD, "PERMANENT FOSTER CARE".(CNTY.COM. MACKAY SIG.) April 28, 1983
COUNTY ATTORNEY & NATURAL FATHER FILE BRIEFS SAYING LOWER COURT HAS NO JURISDICTION TO ORDER NEW TRIAL 83-120
MT.SUP.CT. DENIES COUNTY ATTORNEY HIS WRIT AND ALL ALTERNATIVES IN 83-120 April 28, 1983
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUES

# FLOW CHART

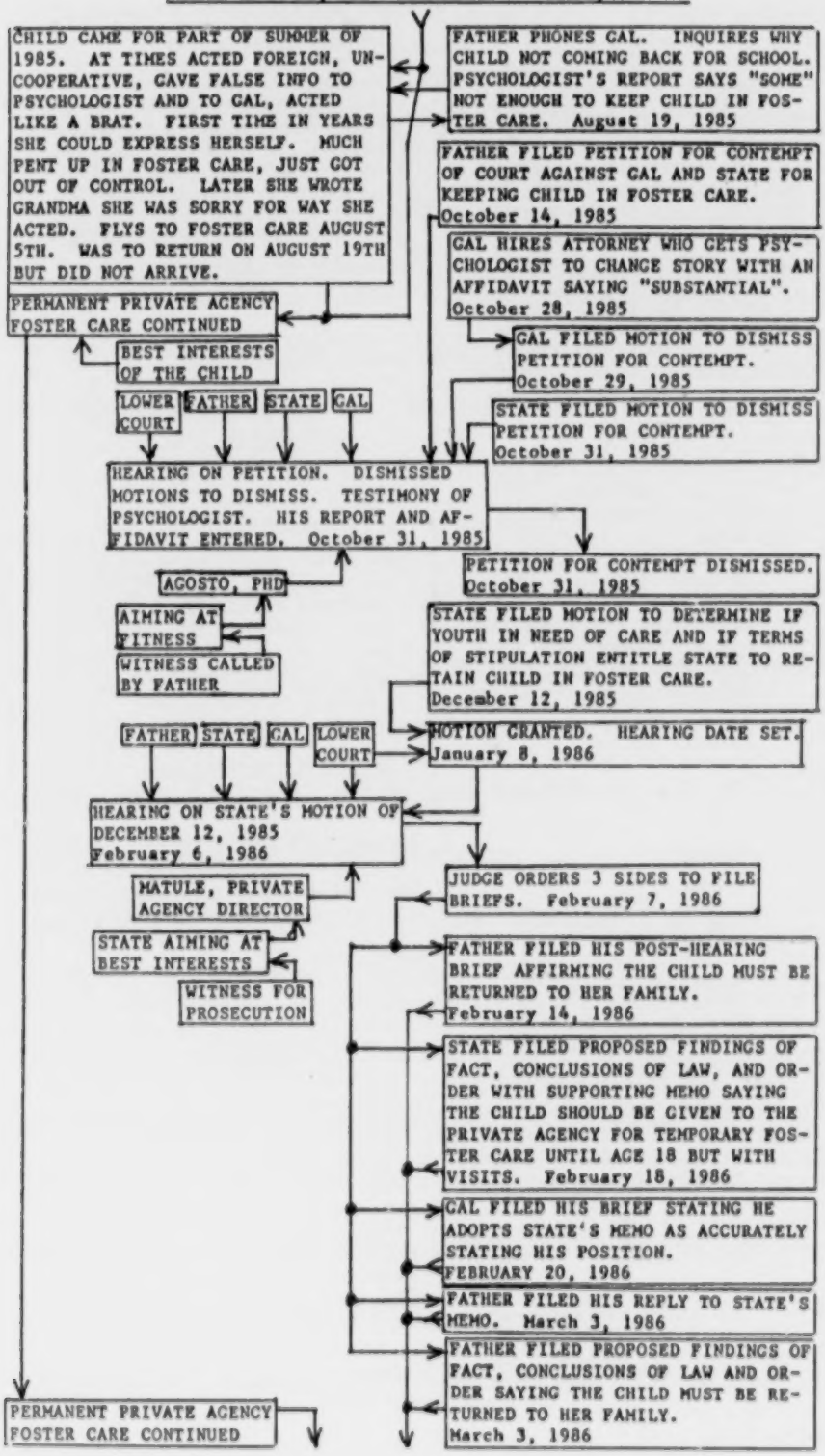
## 5TH STAGE APRIL 28, 1983 TO MARCH 8, 1985


PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED
REMITTITUR 83-120 FROM MT. SUP. CT. DOES NOT GET CROSS-REFERENCED IN DJ-79-188, YOUTH IN NEED OF CARE. PLACED IN FILE EX RELATOR, HAROLD HANSER V. 13TH JUDICIAL DISTRICT COURT, ET AL
NO EFFECT
COUNTY ATTORNEY FOR STATE FILES MOTION IN LOWER COURT FOR A NEW TRIAL DENIED TO HIM IN 83-120, SAYING THERE IS NO CONTROLLING STATUTE NOR RULE OF COURT GOVERNING THIS CASE AND WHAT CAN A SUCCESSOR JUDGE DO. May 17, 1983
FATHER RESPONSES TO NEW TRIAL MOTION SAYING COURT HAS NO AUTHORITY TO HOLD NEW TRIAL WHERE CASE IS REMANDED SOLELY FOR FURTHER FINDINGS.
SRS FILE SHOWS OVERALL GOAL IS "PERMANENT FOSTER HOME CARE". "CHILD IS IN PERMANENT CARE". November 21, 1983
GUARDIAN AD LITEM FILES MEMO SUPPORTING THE STATE ASKING IF THERE IS CLEAR AND CONVINCING EVIDENCE SUPPORTING YOUTH IN NEED OF CARE WITHIN CONTEMPLATION OF TITLE 41-3-101, ET SEQ., AND, FOR PARENTAL RIGHTS TERMINATED. May 31, 1983.
SRS FILE SHOWS REQUEST OF COUNTY ATTORNEY TO DEVELOP DATA FOR USE IN COURT:
1. CURRENT PSYCHIATRIC EXAM ON FATHER.
2. PSYCHOLOGICAL EVALUATION OF HIS WIFE.
3. HOME STUDY.
4. COURT ORDER PERMITTING COURT SERVICES TO GO THRU SRS FILE TO MAKE A "VALID EVALUATION OF THE PARENTAL HOME".
5. "CHILD IS NOT ENTIRELY CONVINCED FITZGERALD IS FATHER." August 22, 1984
FATHER REPLY TO GUARDIAN'S MEMO AFFIRMS FEB 14, 1983 TRIAL BRIEF
STATE FILES MEMO CONCURRING WITH GUARDIAN VIEW OF THE CASE. June 23, 1983.
JUDGE GRANTS STATE'S MOTION FOR NEW TRIAL August 7, 1984
FATHER SERVES INTERROGATORIES ON STATE. August 20, 1984
FATHER FILES REQUEST UNDER R.C.P. 34 TO PRODUCE DOCUMENTS August 23, 1984
FATHER SERVES INTERROGATORIES ON GUARDIAN AD LITEM August 23, 1984
FATHER FILES MOTION TO SHORTEN TIME FOR DISCOVERY WITHDRAWN LATER August 28, 1984
LOWER COURT
STATE
GAL
FATHER
JUDGE HOLDS HEARING BUT NO TRIAL GRANTS VISITS REJECTS STATE INVASION OF STEPMOTHER'S PRIVACY September 4, 1984
SRS SENDS PROPOSED SERVICE TREATMENT AGREEMENT BETWEEN FATHER AND CHILDREN'S SERVICES November 5, 1984 OBJECTED TO LATER
STATE RESPONDS WEAKLY TO INTERROGATORIES October 19, 1984
FATHER MAKES REQUEST OF STATE PRODUCE UNDER DISCOVERY. NOT HONORED November 16, 1984
FATHER'S MOTION TO BIFURCATE HEARINGS GRANTED December 1984
FATHER'S ATTORNEY BUT NOT FATHER
GAL
STATE
LOWER COURT
SRS SENDS 2ND PROPOSED SERVICE TREATMENT AGREEMENT BETWEEN FATHER AND CHILDREN'S SERVICES February 8, 1985 OBJECTED TO LATER
JUDGE HOLDS HEARING ON DISCOVERY WITHOUT PRESENCE OR KNOWLEDGE OF FATHER--BUT MAKES DEROGATORY REMARKS ABOUT FATHER March 8, 1985
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED

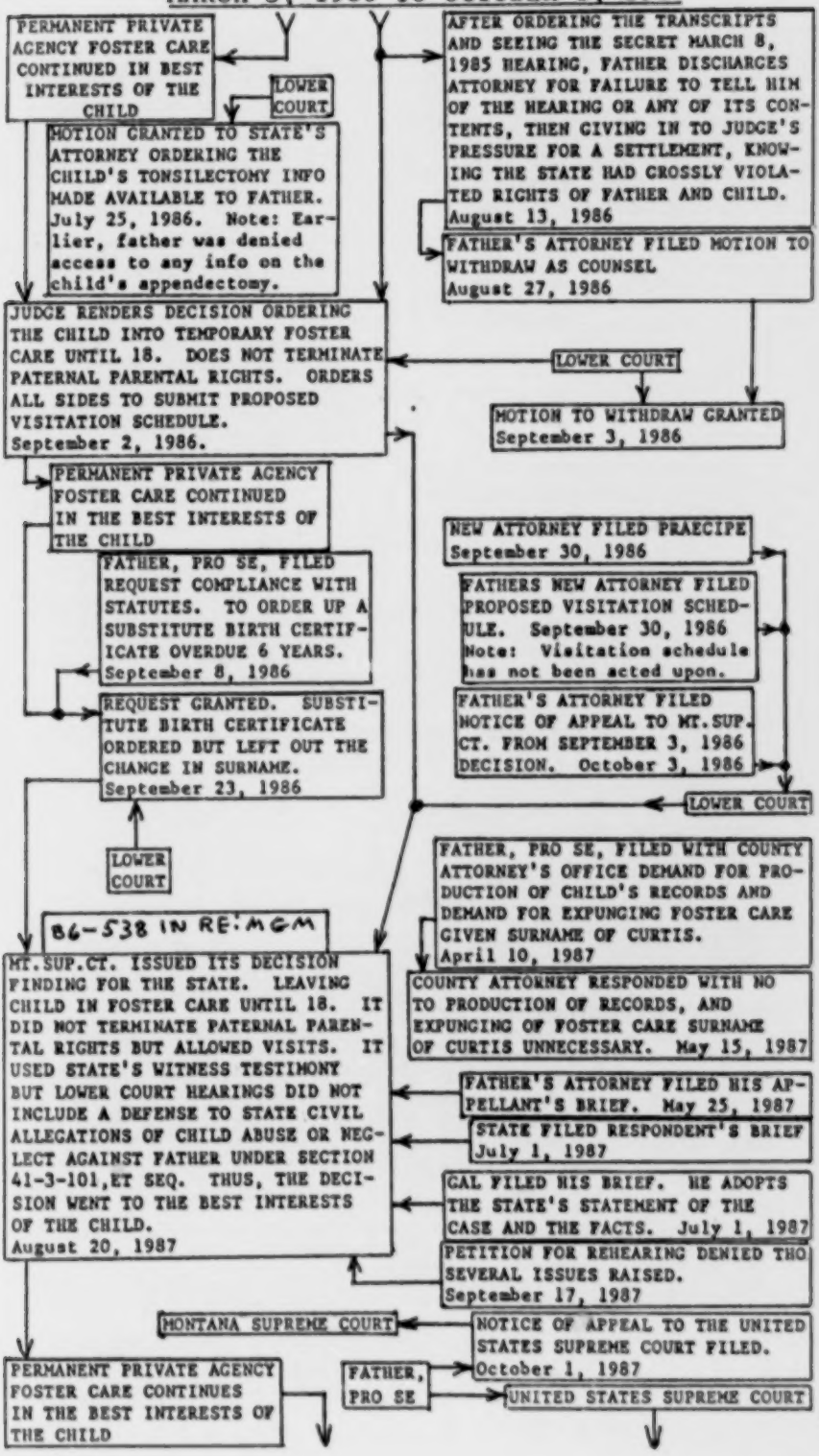
# FLOW CHART 6TH STAGE
## MARCH 8, 1985 TO AUGUST 13, 1985


PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED
PARTIAL DISCOVERY GRANTED TO FATHER. JUDGE VIEWS SRS FILE IN CAMERA GIVING FATHER'S ATTORNEY WHAT JUDGE DECIDES. NO FURTHER DISCOVER LEGALLY POSSIBLE.
FATHER'S ATTORNEY TAKES DEPOSITION FROM PRIVATE AGENCY FOSTER CARE DIRECTOR. April 25, 1985
CAL ATTEMPTS TO SWAY PSYCHIATRIST FATHER HIRED. March 21, 1985
FATHER'S HIRED PSYCHIATRIST FILED HIS FULL REPORT ON VISITS BETWEEN CHILD AND HER FAMILY PERMITTED BY COURT ORDER. FATHER AND STEPMOTHER FOUND TO BE ADEQUATE PARENTS. THE 3 WERE FOUND NOT TO HAVE ANY PSYCHIATRIC DISORDERS. RECOMMENDATION CHILD BE RETURNED TO HER FAMILY. REPORT SUBPRESSED. May 1, 1985
FATHER'S ATTORNEY SENDS OBJECTIONS TO SRS AS TO PROPOSED SERVICE TREATMENT AGREEMENT BETWEEN FATHER AND CHILDREN'S SERVICES. March 28, 1985
LOWER COURT
FATHER
STATE
GAL
JUDGE ORDERS FATHER PRODUCE, UNDER DISCOVERY, 2 REPORTS BY PSYCHOLOGISTS SECRETLY HIRED WHO REPORTED TO FATHER'S ATTORNEY AND PSYCHIATRIST. REPORTS FAVORED FATHER--REPORTS SUBPRESSED. May 2, 1985
HEARINGS HELD 2 DAYS TO ADMIT STATE'S SIDE. May 2 & 3, 1985
MATULE, PRIVATE AGENCY DIRECTOR
WAGNER, PHD
TRANEL, PHD
HONAKER, RN
STATE AIMING AT BEST INTERESTS
WITNESSES FOR PROSECUTION
JUDGE HOLDS IN CAMERA CONFERENCE SAYING HE HAS HEARD ENOUGH-WANTS A SETTLEMENT OR HE WOULD WRITE A DECISION NO ONE COULD APPEAL. May 3, 1985
FATHER'S ATTORNEY SAYS TO FATHER HE WANTS TO WIN SOMETHING--OFFER THEM A SETTLEMENT May 3, 1985
RICHARDS PAST CO-WORKER
FATHER AIMING AT FITNESS
ONE WITNESS ALLOWED FOR THE DEFENSE
FATHER DOES NOT KNOW ABOUT SECRET HEARING OF MARCH 8, 1985. HE OFFERS PLAN LATER REJECTED BY ATTORNEY: PLAN MUST CONFORM TO REMITTITUR--CHILD LIVES WITH HER FAMILY 180 DAYS--IF STATE FAILS TO PROVE UNFITNESS THEN PERMANENT CUSTODY TO FATHER AND STEPMOTHER.
FATHER'S ATTORNEY DRAFTS OWN PLAN CALLS FOR CHILD TO LIVE WITH HER FAMILY THE SUMMER OF 1985. STATE COULD NOT USE FOSTER CARE CAUSED EMOTIONAL SCARS AGAINST FATHER. CHILD TO BE EXAMINED FOR FAMILY INDUCED SUBSTANTIAL IMPAIRMENT. IF SO THEN CHILD RETURNS TO FOSTER CARE WITH VISITS.
GAL DELETES PART ABOUT THE STATE COULD NOT USE FOSTER CARE CAUSED EMOTIONAL SCARS AGAINST FATHER. CHANGES METHODOLOGY. APPOINTS A PSYCHOLOGIST, TO REPORT TO GAL, TO EXAMINE THE CHILD FOR EFFECTS OF 2 THREE WEEK VISITS. LEAVES IN NAME OF 2ND PSYCHOLOGIST BUT NOT USE HER. LEAVES IN THE WORD PSYCHIATRIST BUT REJECTS ONE FATHER HIRED AND NOT USE ANOTHER.
DE FACTO STIPULATION IN PLACE FOR A MONTH THEN PARTIES SIGN IT. ATTORNEY DOES NOT TELL FATHER ABOUT MARCH 8TH SECRET HEARING, PERMANENT FOSTER CARE REPORTS IN SRS FILES, PSYCHOLOGIST WAS APPOINTED BY GAL, PAID BY THE PRIVATE AGENCY, THEIR SETTING HIS GUIDELINES, THE PSYCHIATRIST WOULD NOT BE USED, NOR THE 2ND PSYCHOLOGIST, PREVIOUSLY HIRED BY FATHER, WOULD NOT BE USED, BUT DID SAY IF NOT SIGNED, CHILD GOES BACK TO FOSTER CARE AT ONCE WITH NO VISITS. July 26, 1985
PSYCHOLOGIST'S REPORT SAYS "SOME" IMPAIRMENT. August 2, 1985
CHILD RETURNED TO PRIVATE AGENCY FOSTER CARE. August 5, 1985
DE FACTO STIPULATION BECOMES ORDER OF THE COURT. August 13, 1985
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED

# FLOW CHART 7TH STAGE
## AUGUST 13, 1985 TO MARCH 3, 1986


CHILD CAME FOR PART OF SUMMER OF 1985. AT TIMES ACTED FOREIGN, UNCOOPERATIVE, GAVE FALSE INFO TO PSYCHOLOGIST AND TO GAL, ACTED LIKE A BRAT. FIRST TIME IN YEARS SHE COULD EXPRESS HERSELF. MUCH PENT UP IN FOSTER CARE, JUST GOT OUT OF CONTROL. LATER SHE WROTE GRANDMA SHE WAS SORRY FOR WAY SHE ACTED. FLYS TO FOSTER CARE AUGUST 5TH. WAS TO RETURN ON AUGUST 19TH BUT DID NOT ARRIVE.
FATHER PHONES GAL. INQUIRES WHY CHILD NOT COMING BACK FOR SCHOOL. PSYCHOLOGIST'S REPORT SAYS "SOME" NOT ENOUGH TO KEEP CHILD IN FOSTER CARE. August 19, 1985
FATHER FILED PETITION FOR CONTEMPT OF COURT AGAINST GAL AND STATE FOR KEEPING CHILD IN FOSTER CARE. October 14, 1985
GAL HIRES ATTORNEY WHO GETS PSYCHOLOGIST TO CHANGE STORY WITH AN AFFIDAVIT SAYING "SUBSTANTIAL". October 28, 1985
GAL FILED MOTION TO DISMISS PETITION FOR CONTEMPT. October 29, 1985
STATE FILED MOTION TO DISMISS PETITION FOR CONTEMPT. October 31, 1985
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED
BEST INTERESTS OF THE CHILD
LOWER COURT
FATHER
STATE
GAL
HEARING ON PETITION. DISMISSED MOTIONS TO DISMISS. TESTIMONY OF PSYCHOLOGIST. HIS REPORT AND AFFIDAVIT ENTERED. October 31, 1985
PETITION FOR CONTEMPT DISMISSED. October 31, 1985
AGOSTO, PHD
AIMING AT FITNESS
WITNESS CALLED BY FATHER
STATE FILED MOTION TO DETERMINE IF YOUTH IN NEED OF CARE AND IF TERMS OF STIPULATION ENTITLE STATE TO RETAIN CHILD IN FOSTER CARE. December 12, 1985
FATHER
STATE
GAL
LOWER COURT
MOTION GRANTED. HEARING DATE SET. January 8, 1986
HEARING ON STATE'S MOTION OF DECEMBER 12, 1985 February 6, 1986
JUDGE ORDERS 3 SIDES TO FILE BRIEFS. February 7, 1986
MATULE, PRIVATE AGENCY DIRECTOR
STATE AIMING AT BEST INTERESTS
WITNESS FOR PROSECUTION
FATHER FILED HIS POST-HEARING BRIEF AFFIRMING THE CHILD MUST BE RETURNED TO HER FAMILY. February 14, 1986
STATE FILED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER WITH SUPPORTING MEMO SAYING THE CHILD SHOULD BE GIVEN TO THE PRIVATE AGENCY FOR TEMPORARY FOSTER CARE UNTIL AGE 18 BUT WITH VISITS. February 18, 1986
GAL FILED HIS BRIEF STATING HE ADOPTS STATE'S MEMO AS ACCURATELY STATING HIS POSITION. FEBRUARY 20, 1986
FATHER FILED HIS REPLY TO STATE'S MEMO. March 3, 1986
FATHER FILED PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER SAYING THE CHILD MUST BE RETURNED TO HER FAMILY. March 3, 1986
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED

# FLOW CHART 8TH STAGE
## MARCH 3, 1986 TO OCTOBER 1, 1987


PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED IN BEST INTERESTS OF THE CHILD
LOWER COURT
MOTION GRANTED TO STATE'S ATTORNEY ORDERING THE CHILD'S TONSILECTOMY INFO MADE AVAILABLE TO FATHER. July 25, 1986. Note: Earlier, father was denied access to any info on the child's appendectomy.
AFTER ORDERING THE TRANSCRIPTS AND SEEING THE SECRET MARCH 8, 1985 HEARING, FATHER DISCHARGES ATTORNEY FOR FAILURE TO TELL HIM OF THE HEARING OR ANY OF ITS CONTENTS, THEN GIVING IN TO JUDGE'S PRESSURE FOR A SETTLEMENT, KNOWING THE STATE HAD GROSSLY VIOLATED RIGHTS OF FATHER AND CHILD. August 13, 1986
FATHER'S ATTORNEY FILED MOTION TO WITHDRAW AS COUNSEL August 27, 1986
JUDGE RENDERS DECISION ORDERING THE CHILD INTO TEMPORARY FOSTER CARE UNTIL 18. DOES NOT TERMINATE PATERNAL PARENTAL RIGHTS. ORDERS ALL SIDES TO SUBMIT PROPOSED VISITATION SCHEDULE. September 2, 1986.
LOWER COURT
MOTION TO WITHDRAW GRANTED September 3, 1986
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUED IN THE BEST INTERESTS OF THE CHILD
FATHER, PRO SE, FILED REQUEST COMPLIANCE WITH STATUTES. TO ORDER UP A SUBSTITUTE BIRTH CERTIFICATE OVERDUE 6 YEARS. September 8, 1986
NEW ATTORNEY FILED PRAECIPE September 30, 1986
FATHERS NEW ATTORNEY FILED PROPOSED VISITATION SCHEDULE. September 30, 1986 Note: Visitation schedule has not been acted upon.
REQUEST GRANTED. SUBSTITUTE BIRTH CERTIFICATE ORDERED BUT LEFT OUT THE CHANGE IN SURNAME. September 23, 1986
FATHER'S ATTORNEY FILED NOTICE OF APPEAL TO MT. SUP. CT. FROM SEPTEMBER 3, 1986 DECISION. October 3, 1986
LOWER COURT
LOWER COURT
FATHER, PRO SE, FILED WITH COUNTY ATTORNEY'S OFFICE DEMAND FOR PRODUCTION OF CHILD'S RECORDS AND DEMAND FOR EXPUNGING FOSTER CARE GIVEN SURNAME OF CURTIS. April 10, 1987
86-538 IN RE: MGM
MT. SUP. CT. ISSUED ITS DECISION FINDING FOR THE STATE. LEAVING CHILD IN FOSTER CARE UNTIL 18. IT DID NOT TERMINATE PATERNAL PARENTAL RIGHTS BUT ALLOWED VISITS. IT USED STATE'S WITNESS TESTIMONY BUT LOWER COURT HEARINGS DID NOT INCLUDE A DEFENSE TO STATE CIVIL ALLEGATIONS OF CHILD ABUSE OR NEGLECT AGAINST FATHER UNDER SECTION 41-3-101, ET SEQ. THUS, THE DECISION WENT TO THE BEST INTERESTS OF THE CHILD. August 20, 1987
COUNTY ATTORNEY RESPONDED WITH NO TO PRODUCTION OF RECORDS, AND EXPUNGING OF FOSTER CARE SURNAME OF CURTIS UNNECESSARY. May 15, 1987
FATHER'S ATTORNEY FILED HIS APPELLANT'S BRIEF. May 25, 1987
STATE FILED RESPONDENT'S BRIEF July 1, 1987
GAL FILED HIS BRIEF. HE ADOPTS THE STATE'S STATEMENT OF THE CASE AND THE FACTS. July 1, 1987
PETITION FOR REHEARING DENIED THO SEVERAL ISSUES RAISED. September 17, 1987
MONTANA SUPREME COURT
NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT FILED. October 1, 1987
PERMANENT PRIVATE AGENCY FOSTER CARE CONTINUES IN THE BEST INTERESTS OF THE CHILD
FATHER, PRO SE
UNITED STATES SUPREME COURT

# APPENDIX L

## MCA TITLE 40, CHAPTER 6, PART 1
## PARENT AND CHILD
## FAMILY LAW

40-6-109. Jurisdiction--venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the fa-

ther is deceased, in which proceedings for probate of his estate have been or could be commenced.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a part, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a

release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the

court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support

payments with respect to the child or in connection with her pregnancy; or

(d) whether any man had formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedures or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served a notice of intent to release at

least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowlegment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by

a person entitled to receive it is sufficient. If no person has been identified as the natural fathter or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not re-

ceive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

40-6-130. Best interests of the child--custody to father--legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the

state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

MCA TITLE 41, CHAPTER 3, PART 1
MINORS
CHILD ABUSE, NEGLECT, AND DEPENDENCY

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those reponsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community

members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury,

including injuries sustained as a result of excessive corporal punishment;

b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection 1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not

manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will

be most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

iii) otherwise be futile in terms of the survival of the infant; or

c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection,

"infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hopitalized since birth. who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm" means imminent risk of harm.

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death,

permanent or temporary disfigurement, or impairment of any bodily organ or function.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a

youth who is dependent, abused or neglected as defined in this section.

(12) "Department" means the department of family services provided for in 2-15-2401.

(13) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(14) "Social worker" means an employee of the department of family services whose duties generally involve the provision of either child or adult protective services, or both.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state

of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office

of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custo-

dy of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause

under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investiga-

tive authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such

relief as may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, shall be served by a peace officer or a representative of the department of family services on the person or persons named therein. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon thereafter as possible.

(c) The order shall require the person served to comply immediately with the terms thereof or to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of pre-

senting evidence establishing probable cause for the issuance of the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of family services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of family services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or

other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interests of the youth.

41-3-404. Adjudicatory hearing--temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1,

part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4)(a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

41-3-406. Dispositional hearing. If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its

judgment making any of the following dispositions to protect the welfare of the youth:

(1) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(2) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(3) transfer legal custody to any of the following:

(a) department of family services;

(b) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(c) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care

for the youth;

(4) order any party to the action to do what is necesary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling.

(5) order such further care and treatment as the court may deem in the best interest of the youth.

41-3-408. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public inter-

est compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo peridic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the follow-

ing:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-1124 and the court determines that a youth to whom limited emanci-

pation is granted does not have sufficient funds to finance transition to limited emancipation status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation;

or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981."

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a petition for the termination of the parent-child relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or

conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

41-3-607. Petition for termination--separate hearing--right to counsel--no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files a petition for termi-

nation of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

41-3-609. Criteria for termination. (1)

The court may order a termination of the parent-child relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), (1)(c), as follows exist:

(a) The parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of

the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condidtion of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care

and provide for the child;

(e) present judically ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely men-

tally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination to determine if the child has been permanently placed.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. If the child

is not in a permanent placement at the time of the review hearing, the guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

41-3-1115. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the

youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably and Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12 month anniversary date of the child's

placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the

youth court.

(The above MCA cites were a Typed Copy)

(Typed Copy)

USC TITLE 25--INDIANS

1912. Pending court proceedings

(e) Foster care placement orders; evidence; determination of damage to child

No Foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the ab-

sence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

APPENDIX M



[redacted]

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ITINERARY FOR: CURTIS/MARGARET MC INVOICE NBR: 71103401 PAGE 01
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| 2JAN SA | CONTINENTAL | 1751 Y | BILLINGS | 210P | MISSOULA | 311P |

THE CASEY FAMILY PROGRAM
800 NORTH BENTON
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HELENA, MT 596
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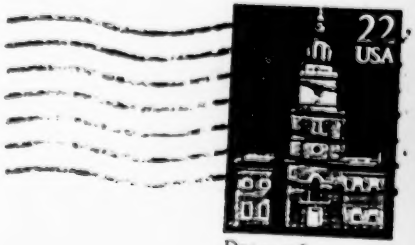

Dec 12,1787
Pennsylvania

Frank B. Fitzgerald
3000 Hallowell Lane
Billings, MT 59101

193

APPENDIX N (Typed Copy)

IN THE SUPREME COURT OF THE STATE OF MONTANA

1987

IN THE MATTER OF M.G.M. ) NOTICE OF
Youth in Need of Care ) APPEAL

NOTICE IS HEREBY GIVEN that Frank B. Fitzgerald, the Appellant in the above entitled action does hereby appeal to the Supreme Court Of The United States Of America from the judgment made and rendered in this matter on August 20, 1987 and made final by denial of Petition For Rehearing on September 17, 1987, and from each and every part thereof.

Signed and Dated the First DAY OF OCTOBER, 1987.

(Sig) Frank B. Fitzgerald

**********

CERTIFICATE OF SERVICE

This is to certify that the foregoing "NOTICE OF APPEAL" was duly served via

first class prepaid mail upon all opposing attorneys of record at their addresses this First DAY OF OCTOBER, 1987.

(Sig) Frank B. Fitzgerald

Subscribed and sworn this First DAY OF OCTOBER, 1987,

(SEAL) (Sig) Linda Branum
Notary Public for State of Montana Residing at Billings,Mt.
My Commission Expires 8/18/88